IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 654 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KATHI PRATAPBHAI MANGLUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 654 of 2002

MR KB ANANDJIWALA for Petitioner No. 1

MR BD DESAI ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/02/2002

ORAL JUDGEMENT

#. Rule. Mr.B.D.Desai, learned APP waives service of rule. By consent, this application is being heard and disposed of finally.

#. The application was placed for hearing on 4.2.2002 before the learned Judge of this Court who had issued notice returnable on 12.2.2002. Then on 12.2.2002 it was adjourned to 14.2.2002, then on 14.2.2002 the learned Judge observed that the matter may not be placed before him at this stage, therefore, the matter has been placed before this Court for hearing.

#. On hearing the learned advocates for the parties it appears that an FIR has been filed before Rajula Police Station in Amreli District being CR No.85/2001 on 13.6.2001 at about 9:00 P.M. It has been alleged in the FIR filed by the informant who is a resident of village Rampur in Rajula Taluka of Amreli District that he has one brother and both of them are having agricultural land of 60 vighas. That one Mithabhai who is presently residing at Jamka has his agricultural land. That one Hamirbhai has kept his land for cultivation and for the said purpose he was required to pay a sum of Rs.3,000/to Mithabhai. That, therefore Hamirbhai and informant were invited for evening dinner; that even Prakashbhai and one Vikrambhai were also invited at the said place. That, therefore at about 5:30 P.M. they all gathered together at village Rajula for going to village Jamka. That he and Prakashbhai had proceeded on motorcycle of the informant and the informant himself was driving the said motorcycle. That Hamirbhai and Vikrambhai has proceeded on the vehicle of Hamirbhai. The vehicle of the informant was proceeded ahead and another vehicle was just following. That when they reached near village Katar, Hamirbhai Jayshibhai had made a call and, therefore, the informant took his vehicle back and inquired from Hamirbhai as to what had happened. At that point of time he was informed that there was puncture in the front wheel. That, therefore, the wheel was taken out from the said two wheeler and the informant and Prakashbhai had proceeded to village Katar for the repairing purpose. Hamirbhai and Vikrambhai continued to sit by the side of the said vehicle. That since the tube was not workable it was replaced by a new tube in the said wheel. That, thereafter the informant and Prakashbhai went back to the said place where Hamirbhai was waiting for them.

#. It has been also alleged in the FIR that at about 6:30 P.M. they were little away from the place where Hamirbhai was waiting for them. That at that point of time a white Ambassador Car was found coming facing village Katar by the side of the Motorcycle of Hamirbhai. That one Chapubhai, his brother Pratap, Umeshbhai and Ranjit being the son of uncle of Chapubhai and two

unknown persons were there in the said motor car. That they were in all six persons. That they were armed with swords. The FIR further alleges that they had attacked Hamirbhai and Vikrambhai with the swords and inflicted blows with swords on Hamirbhai and Vikrambhai and, thereafter, they again occupied their position in the Ambassador Car since they could notice the arrival of the petitioner and his companion at the spot and they ran away in the said car. Thereafter, they both reached the spot and they could notice that Hamirbhai was lying by the side of the Motorcycle and his injuries were bleeding and he had already died. It was also noticed that Vikrambhai was also lying there in the said field by the side of Hamirbhai, his injuries were also bleeding and he was also found dead. Therefore, the aforesaid FIR was filed by the said informant.

#. In connection with the said FIR an offence was registered against the accused persons named in the FIR. The present petitioner Pratapbhai had filed bail application before the Sessions Court at Amreli being Misc.Criminal Application No.460/2001. The learned Sessions Judge, who heard the said application was pleased to dismiss the same by the judgment and order dated 10.12.2001. The learned Judge found that no test Identification Parade was carried out and yet there was time for the Investigating Officer to carry out test Identification Parade and, therefore, it would be good case for not releasing the petitioner on bail. The learned Sessions Judge also found that the petitioner had discovered a sword under Section 27 of the Evidence Act and, therefore, the petitioner could not be enlarged on bail. Therefore, the learned Sessions Judge was also pleased to dismiss the application of the present petitioner for enlarging the petitioner on bail.

#. Feeling aggrieved of the said order, the petitioner has preferred this application for his enlargement on bail. It has been mainly contended here that so far the petitioner is concerned the Investigating Officer had no material with him and the only material which has been found with the police papers is the statements of two accused persons. It is also contended that one accused Pratapbhai and one co-accused Bhurabhai both had given the names of the present petitioner to the police and the said statement would not be admissible in evidence for any purpose. That the Investigating Officer has also drawn a discovery panchnama, under which the petitioner is alleged to have discovered a sword under Section 27 of the Evidence Act. That this would not be sufficient material and, therefore, the petitioner is entitled to be

released on bail.

#. Notice was issued and the learned APP Mr.B.D.Desai appears for the State. The Investigating Officer who has filed the charge-sheet is also present before the Court.

#. On hearing, it is found that the petitioner's name was not disclosed in the FIR. It is true that there is one Pratapbhai named in the FIR, but that Pratapbhai is Pratapbhai Dadabhai and not Pratapbhai Manglubhai and there is no dispute about the same and it is an admitted position that the name of the petitioner was not disclosed in the FIR. It would therefore mean that the informant did not know the petitioner and, therefore, he had stated in the FIR that there were two unknown persons present at the spot who had also used swords in causing injuries and murders of the aforesaid two deceased persons.

#. The FIR was filed on 13.6.2001 and present petitioner was arrested on 1.12.2001. According to argument of the learned APP Mr.Desai, thereafter further investigation was undertaken and charge sheet was filed against the present petitioner on 6.2.2002.

##. Therefore, after the arrest of the petitioner i.e. on 1.12.2001 and before the submission of the charge-sheet i.e. on 6.2.2002 the Investigating officer had more than two months at their disposal for carrying out test Identification Parade in order to bring material to show the involvement of the present petitioner in the aforesaid offence. The initial investigation was carried out by the previous Investigating Officer and he was incharge of the said investigation upto 15.12.2001. Therefore, he had at least two weeks for carrying out test Identification Parade. The learned Sessions Judge, during the course of his judgment dated 10.12.2001, has clearly observed that the Investigating Officer may think it proper to hold test Identification Parade and that was one of the grounds for dismissing the bail application of the present petitioner. Despite the said observation made on 10.12.2001 the then Investigating Officer did not undertake any process for holding test Identification Parade parade with respect to the present petitioner though he was incharge of the investigation upto 15.12.2001.

##. Thereafter the investigation has changed the hands and another Police Sub Inspector has taken over further investigation. Therefore, after 15.12.2001 the present Investigating Officer was incharge of the investigation

at least upto 6.2.2002, therefore, he had again a span of not less than six weeks for holding test Identification Parade. Even the present Investigating Officer has also not found it proper to conduct test Identification Parade for bringing materials against the present petitioner. It is required to be considered that the present I.O. who has filed charge-sheet had not less than six weeks at his disposal for conducting test Identification Parade. Even the present I.O. has not found it proper to hold test Identification Parade for bringing material about the identity of the present petitioner and to further show his involvement in the offence in question. Neither the previous I.O. nor the present I.O. has undertaken this process during the course of investigation.

##. The learned APP Mr.Desai has not been able to argue, even with the assistance of the present I.O. who is present in Court to assist him, to explain as to why no such test Identification Parade has been undertaken by this two Police Officers. When the persons were known to the informant, test Identification Parade may not be conducted. At the same time, when the informant has not given the names of the present petitioner and when it has been stated in the FIR that there were two unknown persons present in the Car and were also been armed with swords and they also attacked the two deceased persons then it would have been proper for the I.O. to undertake test Identification Parade in order to ascertain as to whether the informant actually meant to name the present petitioner or as to whether he had somebody else in his mind while saying that there were two unknown persons armed with the swords, this would be in the interest of justice and in the interest of both the parties. However, both the Investigating Officers have found it proper not to undertake test Identification Parade to disclose the identity of the unknown persons mentioned in the FIR by the informant.

##. Even the further statements of the informant does not appear to have been recorded with a view to disclose the identity of the present petitioner even after the arrest of the petitioner on 1.12.2001.

##. So far other material is concerned the learned APP Mr.Desai has stated that accused Pratapbhai Dadabhai and Bhurabhai have given the name of the present petitioner as one of the two unknown persons mentioned in the FIR.

##. Another piece of evidence against the petitioner is that the present petitioner had discovered a sword in accordance with the provision made under Section 27 of

the Evidence Act.

##. No other material is shown to be present in the papers with the Police Investigating Agency. In that view of the matter I am of the opinion that in the present case it cannot be said that the petitioner should not be released on bail. Even the learned Sessions Judge has not made observation during the course of his judgment that there was prima facie case about the involvement of the petitioner except the fact of the disclosure of his name by two co-accused and a discovery panchnama under Section 27 of the Evidence Act and in that view of the matter looking to the materials against the petitioner and looking to the manner in which his involvement has been shown by the Police Investigating Agency this is not a fit case wherein the petitioner should be detained in jail for indefinite period. In other words, it cannot be said that there are grounds to continue the petitioner in jail, on the other hand looking to the materials available against the petitioner this is a fit case wherein the Court should exercised its discretion and jurisdiction in favour of grant of the bail to the present petitioner.

##. At the same time, the learned APP has not been able to explain why the test Identification Parade has not been conducted by the two Investigating Officers. Therefore, it would be in the fitness of things to direct the Additional Director General of Police, CID (Crimes) at Gandhinagar to undertake an inquiry as to why the test Identification Parade has not been carried out by the two Investigating Officers before or even after the filing of the charge-sheet against the petitioner particularly when the matter relates to a double murder case.

##. For the foregoing reasons this application is allowed. The petitioner herein is ordered to be enlarged on bail on his furnishing solvent surety and P.R. in a sum of Rs.20,000/- to the satisfaction of the trial Court on following conditions:-

(a) The petitioner shall not contact, induce or threaten the prosecution witnesses.

(b) The petitioner shall not enter the Rajula Taluka pending, hearing and disposal of the criminal trial against him.

(c) The petitioner shall mark his presence on the 1st working day of every month before the learned JMFC, Rajula and the learned Magistrate will

record his presence to show the compliance of this order and for that purpose the petitioner shall be at liberty to enter Rajula but shall not enter village Rampur.

##. Rule is made absolute to the above extent. D.S. is permitted.

(D. P. BUCH, J.)

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